

Filed 1/25/19 In re Luke R. CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re LUKE R. et al., Persons
Coming Under the Juvenile Court
Law.

B289014
(Los Angeles County
Super. Ct. No. 17LJJP00118A)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

MIKE R.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los
Angeles County, Steven Ipson, Commissioner. Dismissed.

Christopher R. Booth, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Acting Assistant County Counsel, David Michael Miller, Deputy County Counsel, for Plaintiff and Respondent.

Mike R. (father) appeals from a single jurisdictional finding under Welfare and Institutions Code section 300, subdivision (d), that he should have known his son, Luke R. (child), was being sexually abused or was in danger of being sexually abused.¹ Father contends there is insufficient evidence to support the finding. The Los Angeles County Department of Children and Family Services (Department) contends father's appeal should be dismissed, because other jurisdictional findings under section 300, subdivision (b) remain in effect, making the question raised in father's appeal nonjusticiable. We agree with the Department, and we dismiss father's appeal.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

FACTUAL AND PROCEDURAL BACKGROUND

Child welfare history

There is a history of child welfare referrals involving the child dating back to 2010, when he was four years old.² Most of the referrals were closed as unfounded, inconclusive, or both. At least one referral led to a dependency proceeding that ended in August 2015 with a family law exit order giving father sole physical custody of the child and giving Michelle S. (mother) unmonitored day visits several days a week.

Father arrested for assaulting mother

After mother accused father of trying to choke her in the child's presence during a custody exchange in August 2017, father was arrested for domestic violence. Father's arrest triggered a Department investigation, which was initially closed as inconclusive. The child moved in with mother, but father expressed concern that mother was unstable and the child should not be in her care. In the criminal domestic violence proceeding, father denied any

² The factual and procedural history of this case is extensive, and our summary focuses only on the information most pertinent to our decision.

history of domestic violence with mother,³ but he entered a no contest plea and agreed to take a 52-week domestic violence class. It is unclear from the record when father entered his plea or when he was released from custody.

Anonymous referrals

On August 30, 2017, the Department received a referral from an anonymous caller reporting that mother lacked housing and had a history of violating restraining orders by returning to partners who engage in domestic violence against her. The caller reported that father uses methamphetamine, but stated father had been doing better caring for the child until he was arrested after a physical altercation with mother. Father had asked the caller to try and obtain custody of the child because father was concerned about mother's ability to provide adequate care. Although the caller expressed concerns about mother, he also reported that the child appeared to be well and happy.

On September 15, 2017, the Department received a second referral. The caller was aware of the first referral, and reported that mother was staying with the child's maternal grandfather (MGF) despite a social worker telling mother not to take the child to MGF's home because MGF

³ Father acknowledged involvement in a prior domestic violence case, but claimed it was the result of an altercation with one of mother's boyfriends and denied that he ever "put his hands" on mother.

possesses pornography. The caller claimed the child had told mother that father's friend (a 40-year-old man named Kevin) had sexually molested the child. According to the caller, father would take the child to Kevin's house and leave him there while father used methamphetamine, and that mother still takes the child there.

A third anonymous call raised concerns that MGF was engaging in inappropriate sexual conduct with mother in the child's presence.

Investigation into sex abuse allegations

The day after the second anonymous referral, a sheriff's deputy visited mother and the child to investigate the allegations that Kevin had sexually abused the child. The child told the deputy his family had known Kevin for a long time, with no incidents occurring until April 2017, when he was 10 years old. Father trusted Kevin, and took the child to Kevin's house almost every day between April and August 2017. The child stated the molestation occurred almost every visit. He had not told anyone because he was afraid Kevin would do something to hurt him, but now that he was no longer going to Kevin's house, he decided to talk about what had happened.

A social worker interviewed mother two days later, and mother claimed she only found out about the molestation when the child spoke to the deputy. Mother stated father told her Kevin would give father money and new tires. She

thought father was exploiting the child without really knowing. Mother thought the abuse likely continued until father was arrested, but denied the child had seen Kevin since father's arrest. In the same interview, mother admitted she had taken the child to MGF's home, but denied MGF sexually abused the child. She agreed to keep the child away from MGF and to seek a restraining order protecting the child from MGF.

The social worker interviewed the child privately at school, describing him as clean and well taken care of. The child described Kevin's actions to the social worker. The child said father took him to Kevin's house most weekdays and he would stay there until 8 or 9 p.m. The child said neither his mother nor his father knew about the abuse while it was occurring. His mother just found out when he spoke to the police officer. The child denied any sexual abuse by grandfather.

During a forensic examination, the child gave the nurse practitioner additional details regarding Kevin's sexual abuse. The nurse practitioner felt very strongly that the child should not be returned to mother's custody, in part because of mother's history of abuse by MGF and in part because mother did not appear protective of the child. In an interview on October 13, 2017, the child denied having seen Kevin or MGF in a long time. He confirmed no one knew about the sexual abuse until he told law enforcement about a month earlier. Mother was renting a room and was pursuing a job lead.

Initial dependency petition

On October 18, 2017, the Department filed a petition and sought an initial order detaining the child from father and placing him with mother, because he felt safe and was doing well in mother's custody. The detention report included the incident report from father's domestic violence arrest, the incident report concerning the molestation investigation, and father's criminal history report showing father had a lengthy criminal history, with multiple convictions for possession of a controlled substance, and numerous charges of lesser crimes such as forgery and identity theft. The Department also reported that it had been unable to contact father due to his incarceration, but it had requested for father to be transported to the arraignment hearing. The Department's petition contained two identical allegations under section 300, subdivisions (a) and (b), relating to domestic violence between mother and father, and two identical allegations under section 300, subdivisions (b) and (d), relating to sexual abuse. The full text of the sexual abuse allegations read as follows: "On numerous prior occasions since December of 2016, the child . . . was sexually abused by an unrelated adult Kevin [], since the age of 10 years old. Such sexual abuse consisted of the unrelated adult instructing the child to get naked and sit on the unrelated adult's lap while the unrelated adult was naked. The unrelated adult sodomized the child by placing

the unrelated adult's penis in the child's anus. The unrelated adult fondled the child's penis. The unrelated adult forced the child to fondle the unrelated adult's penis. The unrelated adult instructed the child to sit on the unrelated adult and defecate on the unrelated adult. The child's mother . . . failed to take action to protect the child when she knew or reasonably should have known, of said sexual abuse of the child by the unrelated adult. The child's father . . . failed to take action to protect the child [when] he knew or reasonably should have known, of said sexual abuse of the child by the unrelated adult. Such sexual abuse of the child on the part of the unrelated adult and the failure to protect on the part of the parents endangers the child's physical health and safety and places the child at risk of serious physical harm, damage, sexual abuse and failure to protect."

The court made detention findings against father, and ordered the Department to assess the possibility of monthly visits at father's place of incarceration. An adjudication hearing was scheduled for December 18, 2017.

Mother arrested for child endangerment

On November 5, 2017, the child became separated from his mother under circumstances not relevant to the current appeal. The child was dropped off at a fire station; he knew his father's phone number, so the Fire Department contacted father, who was there by the time law enforcement arrived.

Both father and child reported they had not seen each other in a long time. Although the child wanted to stay with father, the Department would not release him to father in light of the earlier detention orders.

First amended petition

The Department filed an amended petition, adding a count relating to the events of November 5, 2017. The court ordered the child placed in shelter care with monitored visits for both parents, and ordered the Department to conduct a pre-release investigation of father, to explore the possibility of releasing the child to father.

The earliest evidence in the record that the Department discussed the sexual abuse allegations with father comes from the notes of the social worker's interview conducted on December 13, 2017. Father was highly emotional and cried often, but when asked about his knowledge of any sexual abuse, father stated that Kevin is a good guy and the allegations against him are all hearsay. Given the consistency of the child's reports about the sexual abuse, the Department expressed concern that the child may have exhibited warning signs during the time he was being abused that would lead a prudent parent to question the reasons for such behaviors. When father was asked what he and his family needed to overcome the reasons that brought them to the Department's attention again, father stated "I need assistance with the 52 week domestic violence class so I

don't go back to jail. If we need a restraining order to protect my son from Kevin [] that's fine."

Father started monitored visits and phone contact with the child in November 2017. The Department expressed concern that father spoke to the child in baby talk, and he would respond in kind. In addition, father discussed the case and the prospect of the child returning home despite being advised not to discuss such issues with the child. The child's caregiver raised concerns about father's demeanor and behavior, reporting that father called at late hours, was unaware of the day of the week, and raised improper topics with the child. After phone calls with father, the child would reportedly start acting and talking like a baby.

Adjudication hearing

At the adjudication hearing in January 2018, father waived rights with respect to the domestic violence count under section 300, subdivision (b), and entered a no-contest plea as to that count. The Department's reports were admitted into evidence, and neither parent offered additional evidence. On the count relating to failure to protect from sexual abuse, the argument from the parties focused on whether father had reason to know the child was being sexually abused. The Department noted the consistency of minor's accounts of the sexual abuse, and argued that mother's earlier statements about her concerns and about Kevin giving father money and new tires demonstrated that

father should have known that he was placing his son at risk of being abused by dropping him off at Kevin's home for babysitting almost every day. Father's attorney pointed out that father was incarcerated at the time the child told anyone about the abuse. Father's counsel argued father did not receive anything of value from Kevin, and mother's statements about Kevin giving father money and tires were not credible because she and father were in an adversarial relationship. Father also argued that because the Department had not presented any evidence that the child's grades or demeanor changed while the abuse was occurring, it had failed to show that father "should have known" about the abuse. Minor's counsel argued the facts demonstrated father should have been aware of the risk of sexual abuse and failed to protect minor. On rebuttal, the Department pointed out that mother's statements about father were very credible, because at the same time mother stated she was aware father was receiving benefits from Kevin, she also said she did not think father knew what was happening. The Department argued it was not reasonable that father was leaving minor alone at this person's home until 8 or 9 at night on a daily basis, while claiming not to know something was going on.

After initially taking the matter under submission, the court dismissed the domestic violence allegation made under subdivision (a) of section 300, but sustained it as alleged under subdivision (b), and sustained the remaining two subdivision (b) allegations, relating to failure to protect from

sex abuse and physical harm, as well as the subdivision (d) allegation. The child remained in suitable placement and both parents were to receive reunification services. Father appealed.

DISCUSSION

Father contends there was insufficient evidence to support the jurisdictional finding under section 300, subdivision (d) that he failed to protect minor from sexual abuse. Because neither mother nor father has challenged the identical finding under subdivision (b) of section 300, we dismiss father's appeal as nonjusticiable.

Justiciability

“As a general rule, a single jurisdictional finding supported by substantial evidence is sufficient to support jurisdiction and render moot a challenge to the other findings.” (*In re M.W.* (2015) 238 Cal.App.4th 1444, 1452; accord, *In re I.J.* (2013) 56 Cal.4th 766, 773.) When “issues raised in [an] appeal present no genuine challenge to the court’s assumption of dependency jurisdiction[,] . . . any order we enter will have no practical impact on the pending dependency proceeding, thereby precluding a grant of effective relief. For that reason, we find [such an] appeal to be nonjusticiable.” (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1490–1491.) Some courts have nevertheless exercised their

discretion to review a juvenile court finding that is not essential for jurisdiction over a dependent child when the challenged finding “(1) serves as the basis for dispositional orders that are also challenged on appeal [citations]; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings [citation]; or (3) ‘could have other consequences for [the appellant] beyond jurisdiction’ [citation].” (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762–763.)

Father acknowledges that the court will retain jurisdiction based on the domestic violence allegation under section 300, subdivision (b), but contends that this court may exercise its discretion to reach the merits of the appeal if it finds the challenged sex abuse finding under section 300, subdivision (d), could have an impact on the current or future dependency proceeding or that father would otherwise suffer prejudice. He argues that the finding, if allowed to stand, (1) will impact any future dependency proceeding involving the child or any other children father may have, (2) may result in a report to the Child Abuse Central Index (CACI), which is available to third parties and could harm father’s reputation and job opportunities; and (3) exposes father to potential criminal liability.

Any decision we might render on evidentiary support for the subdivision (d) sex abuse allegation appealed by father “will not result in a reversal of the court’s order asserting jurisdiction. The juvenile court will still be entitled to assert jurisdiction over the minor on the basis of

the unchallenged allegations.” (*In re I.A.*, *supra*, 201 Cal.App.4th at p. 1492.) The unchallenged allegations here include not just the allegations of domestic violence between mother and father, but a separate allegation under section 300, subdivision (b) that is identical to the one father seeks to challenge. Nowhere in father’s briefing on appeal does he challenge the court’s decision to sustain the identical factual findings under section 300, subdivision (b), nor has mother challenged any of the court’s jurisdictional findings. Therefore, any discussion about the evidentiary support behind the finding under subdivision (d) would be merely academic. We cannot grant any relief that would address the harms which are equally attributable to the sustained allegation under subdivision (b). Because father’s appeal raises an abstract or academic question of law, “we cannot render any relief to [f]ather that would have a practical, tangible impact on his position in the dependency proceeding. Even if we found no adequate evidentiary support for the juvenile court’s findings with respect to his conduct, we would not reverse the court’s jurisdictional and dispositional orders nor vacate the court’s assertion of personal jurisdiction over his parental rights.” (*Ibid.*) We therefore dismiss father’s the appeal as nonjusticiable.

DISPOSITION

Father's appeal is dismissed.

MOOR, Acting P.J.

We concur:

KIM, J.

SEIGLE, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.